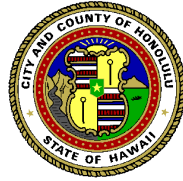


**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL
MAYOR



JAN K. YAMANE
EXECUTIVE DIRECTOR
AND LEGAL COUNSEL

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

Date and Place: February 20, 2019
Kapālama Hale
1st Floor Conference Room
925 Dillingham Boulevard
Honolulu, Hawai'i 96817

Present: Hon. Victoria Marks (ret.), Chair

Hon. Riki Amano (ret.), Commissioner
Lynette Lo Kanda, Commissioner
David B. Monk, Commissioner
Hon. Allene Suemori (ret.), Commissioner

Jan K. Yamane, Executive Director and Legal Counsel (EDLC)
Laurie Wong-Nowinski, Associate Legal Counsel (ALC)
Janice Yonamine, Investigator (INV)
Kristine Bigornia (TA), Legal Clerk III (LCIII)
Joseph Benedict C. Pagkalinawan, Senior Clerk (Sr. Clerk)

Moana Yost, Deputy Corporation Counsel
Department of the Corporation Counsel (COR)

Don Hamada, Member of the Public (present only at Item V.)

MINUTES OF THE ETHICS COMMISSION MEETING

I. Call to Order, Public Notice, Quorum

Commissioner Amano, presiding as acting chair, called the meeting to order at 11:36 am. She announced that Commissioners Monk, Kanda, Suemori, and herself were present, and declared quorum.

II. New Business
A. Chair's Report

1. Announcements, Introductions, Correspondence, and Additional Distribution
2. For Action: Approval of Open Session Minutes of December 19, 2018

Commissioner Monk made and Commissioner Suemori seconded a motion to approve the open session minutes of December 19, 2018. The motion carried unanimously.

3. For Action: Approval of Executive Session Minutes of December 19, 2018
The Commission may convene an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

Commissioner Monk made and Commissioner Suemori seconded a motion to approve the executive session minutes of December 19, 2018. The motion carried unanimously.

*****AGENDA ITEM TAKEN OUT OF ORDER*****

V. Open Forum

A. For Discussion: Caseload and Investigation Information

Commissioner Amano recognized Mr. Don Hamada, prompting Agenda Item V. be taken out of order. Mr. Hamada brought a six-page handout and requested that it be distributed to Commissioners and staff.

Mr. Hamada stated that he had concerns about the Commission's case procedures. He read from an email message he received dated August 31, 2018, where Commission staff said, *"...it will continue investigating his latest ethics concern, in good faith, in the order in which it was received."* He asked on December 13, 2018, where was his case among all active cases. Commission staff replied that *"...it does not disclose such information on cases because it is confidential by law,"* citing Revised Ordinances of Honolulu (ROH) Sec. 3-6.12.

Mr. Hamada argued that the Commission already discloses case information in the City's Annual Report, evidenced by his handout's Exhibits 2 and 3.

Commissioner Amano responded that the Commission does not know the status of cases staff has received. She also noted that the Commission does not provide list of cases, nor the order when cases are handled due to confidentiality. When asked by Commissioners Kanda and Suemori whether his question concerned the timeframe of responses, Mr. Hamada continued that he wanted to know the order of his case. Commissioner Suemori warned that the "order"

might not be linear.

Commissioner Monk noted that each case is pursued and completed in its own time.

Commissioner Suemori asked Mr. Hamada whether rephrasing the message would have helped; for example, “*we cannot tell when it is going to be over, but we are still investigating.*” Mr. Hamada recalled that when he worked for the City, his department told members of the public that “*we will continue monitoring the situation,*” which he thought was a better response.

Commissioner Amano emphasized that disclosing the order of cases could reveal certain confidences. EDLC described that revealing information on cases filed close to certain events—for example, Election Day—may inadvertently reveal confidential information. EDLC added that staff contact complainants directly, and do not disseminate case information through others.

Commissioner Amano stated that disclosing the order of cases may generate problems when a series of cases are withdrawn at the same time. People may assume that all withdrawn cases are similar, thereby disclosing confidential information.

EDLC clarified that staff’s letter was intended to inform Mr. Hamada that cases are received chronologically, but may not be handled in the same order, as Mr. Hamada perceived.

Commissioner Amano thanked Mr. Hamada for bringing his concerns to the Commission, and assured him that the Commission is striving for transparency. She and Commissioner Suemori also assured him that the agency will continue to work on his case.

Mr. Hamada left the meeting.

At 11:55 pm, Commissioner Amano recognized the arrival of Chair Marks. Chair Marks proceeded to lead the meeting.

II. New Business

B. Executive Director and Legal Counsel’s Report

1. Staff Work Reports Summary

EDLC reported that Sr. Clerk Pagkalinawan processed lobbyist filings and assisted with financial disclosures and website updates and LCIII Bigornia processed financial disclosures. Forms processing was still on-going.

EDLC reported that INV Yonamine continues to manage her caseload, helped with the Commission’s holiday “Elf-on-the-Shelf” outreach, and is assisting with tweeting.

2. Statistics

a. Website Sessions – December 2018 and January 2019

December 2018 – 418

January 2019 – 547

EDLC reported that the increase of website sessions during January was likely due to lobbyist and financial disclosure filings.

b. Financial Disclosure Filings – Update

EDLC reported that 70 and 658 disclosures were filed with the Clerk's Office and Ethics Commission, respectively. She emphasized that the Clerk's Office disclosures are public information; Ethics Commission disclosures confidential.

Chair Marks asked for a comparison of the number of disclosures for last year and this year. EDLC stated that such comparisons were pending.

LCIII Bigornia informed the Commission that there has been an increase of disclosures due to the elections and changes in directors.

EDLC highlighted a concern that staff is not informed when employees enter certain positions or leave city employment. This issue has prompted staff to reach out to Administrative Service Officers (ASO) in each city department, with the goal of improving the disclosure process.

Commissioner Amano asked if each City department has a checklist to track incoming and outgoing employees.

Commissioner Kanda asked if non-compliant individuals' paychecks can be delayed until they file the disclosure. Chair Marks responded that it would be difficult and likely would result in labor issues.

Commissioner Amano asked if it is possible for financial disclosures to be added as one of the forms filed by incoming City employees and officials. EDLC wants to reach out to ASOs, since ASOs handle paperwork for incoming and outgoing staff.

c. Lobbyist Registrations, Annual Reports – Update

Sr. Clerk Pagkalinawan stated that current numbers reflect filed lobbyist forms, to date. He also noted that some forms are pending because of deficiencies and awaiting approval. EDLC reported that comparisons of 2019 and 2018 are pending.

3. Budget

b. FY2020 Operating Budget Request – Update

EDLC reported that City Council is awaiting the April special election. Councilmember Kobayashi is the interim chair, and Councilmember Manahan serves as chair of the Budget Committee. EDLC added that this lineup will likely remain throughout the budget cycle.

EDLC reported that Ethics Commission's budget requests, which include travel and training for one (1) commissioner and two (2) staffs, salary increases for EDLC and ALC, and position funding for the Assistant EDLC, cleared administration's review.

Chair Marks and EDLC will attend the budget hearing on March 12.

4. Education and Outreach

a. Ethics Training Program (FY19 – FY20) – Update

EDLC reported that staff conducted the first of two training sessions for Mayor's Cabinet, as requested by the Managing Director. EDLC noted that staff refreshed training to include specific matters that pertain to the Cabinet.

Commissioner Amano asked for the training's attendance; EDLC replied that most directors and some of deputy directors attended. Staff is training deputy directors in March; directors who missed the February training could attend that session. Finally, EDLC mentioned that staff had been requested to add training for Mayor's key staff during March.

b. Twitter – Update

INV Yonamine continues outreach on Twitter. The holiday outreach was successful, resulting in increased likes and retweets of the Commission's Twitter account. She also provided updates on "Can or No Can" tweet episodes. A fact scenario is presented in the first tweet. The answer is revealed in a second tweet on the following day. INV Yonamine shared that the tweets received positive comments from the public. She also added that the purpose of these tweets is to keep the public engaged. Also, staff received feedback from ASOs that fact scenarios should be specific and simple.

Commissioner Amano asked how long it takes to create tweets. INV Yonamine responded that it does not take much time; however, some tweets—such as the Valentines' Day greeting—may take longer to ensure that it is not offensive. Commissioners Amano and Suemori commented positively on staff's efforts.

EDLC reported that the website homepage will be updated to post its Twitter feed. This was inspired by the Mayor's homepage, which prominently features its Twitter feed. Posting allows Twitter content to be seen by viewers who do not follow Twitter.

Commissioner Amano stressed the importance of outreach because it keeps the Commission in the public's awareness. She also emphasized that outreach fulfills one of the Commission's purposes—to train and educate City personnel on the standards of conduct.

c. Outreach – New York City Conflicts of Interest Board (COIB)

EDLC reported that she visited the New York Conflicts of Interest Board (COIB) office during her recent trip to New York City. She met COIB's Executive Director Carolyn Miller and Director of Education and Engagement Alex Kipp. EDLC stated that COIB has a very active social media presence.

During their meeting, EDLC and Mr. Kipp shared training and outreach activities and challenges. He mentioned the challenge of having 20+ staff to train 350,000+ employees. He also commented favorably on our ability to meet with Honolulu's high-ranking city officials at any time.

EDLC reported that Mr. Kipp shared tips on COIB's low budget production costs for its Twitter, Instagram, and other online and social media content—about \$6,000 of video, lighting, camera, and other equipment—and the use of an Adobe Premium app and action figure props. EDLC noted that staff has also collected low-budget props to use for its outreach. Podcasts were suggested as another low-budget outreach method.

d. Creating Accessible Documents Workshop

EDLC reported that she, LCIII Bigornia, and Sr. Clerk Pagkalinawan attended the Accessible Documents Workshop sponsored by the City's Equal Opportunity Office (EOO) and taught by an instructor from the University of Hawai'i (UH). The training taught city agencies how to put their documents in a readable format, thereby making them accessible to users with certain disabilities.

EDLC projected that making Commission documents easily-accessible will be a daunting task, but that staff would start with agendas and minutes.

Commissioner Kanda commented that she knows of agencies that have changed their documents to 12-point sized Helvetica font in order to comply with federal ADA requirements.

IV. Strategic Planning

A. PIG Meeting – *Ethics Commission* – 2027 – Update

EDLC suggested deferring the item until the April meeting. Chair Marks asked all Commissioners for their feedbacks and comments. EDLC noted that Commissioner Monk will send technical edits.

EDLC told Commissioners that the Commission's FY 2018 accomplishments document is still being updated.

Commissioner Amano hoped that a vote to approve would be taken at the next meeting.

Chair Marks asked the EDLC for any potential intern updates from University of Hawai'i at Manoa's Public Administration Program, as well as UH Richardson Law School. The EDLC stated that there requests were pending.

*****AGENDA ITEM TAKEN OUT OF ORDER*****

II. New Business

B. Executive Director and Legal Counsel's Report

7. Uniform Information Practices Act (UIPA) – Deliberative Process Privilege – Discussion

Deputy Corporation Counsel Yost described that Hawai'i Supreme Court's recent case invalidating the deliberative process privilege (that is, the practice of holding pre-decisional communications privileged). The ruling was 3-2. Deputy Corporation Counsel Yost suggested that a reasonable argument to exempt should be made if disclosure of pre-decisional communications frustrates legitimate government functions. She highlighted that the ruling is significant because it was cited by government agencies for a long time.

Deputy Corporation Counsel Yost assured that the Commission is protected by City Ordinances. The Commission's Advisory Opinions are also protected due to privacy interests of individuals, as well as complainants and witnesses.

Commissioner Amano asked if the Commission needs to change anything because of the case. Commissioner Monk raised the issue of the Commission's budget request communications with Corporation Counsel. Both Deputy Corporation Counsel Yost and EDLC agreed that the administrative practice may be affected.

Commissioner Suemori asked if not disclosing budget discussions would frustrate legitimate government function. The ALC described a case years ago where the subject sought a draft advisory opinion being reviewed by the Commission. Staff responded by rejecting the request citing deliberative process privilege.

Both the EDLC and Commissioner Suemori asked why it could not be protected by attorney-client privilege. The ALC responded under those circumstances, the Commission is not represented by staff.

Deputy Corporation Counsel Yost commented that the Commission only releases final advisory opinion drafts when an employee was suspended or had misconduct. She also stressed that it might not be protected.

Commissioner Suemori asked whether the drafts or communications circulated by

Supreme Court to its members is protected. Commissioner Amano raised a concern that the Court creates hundreds of drafts before making a final decision, and leaving it without privilege frustrates a legitimate government function. Chair Marks compared this situation with the Commission releasing past Advisory Opinions containing hundreds of pages.

Commissioner Amano added that Senate Bill (SB) 295 was introduced in this year's legislative session. Deputy Corporation Counsel Yost clarified that SB 295 is a bill legislating the deliberative process privilege. After looking online at the bill's status, EDLC stated that the bill was dead.

V. Adjournment – Next Meeting: April 17, 2019

At 12:56 pm, Commissioner Suemori made and Commissioner Kanda seconded a motion to adjourn the Ethics Commission meeting. The motion carried unanimously.